

Commodity Credit Corporation, USDA

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Director, CCCPSD—the Director, CCC Program Support Division, Foreign Agricultural Service, USDA.

Director, PDD—the Director, Program Development Division, Foreign Agricultural Service, USDA.

Deputy Administrator—Deputy Administrator for Export Credits, Foreign Agricultural Service, USDA.

Force Majeure—damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, princesses, rulers of peoples without the fault of the carrier; wars; public disorders; captures; or detention by public authority in the interest of public safety.

General Sales Manager—General Sales Manager and Associate Administrator, Foreign Agricultural Service, USDA, who is a Vice President, CCC.

KCCO—Kansas City Commodity Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141-6205.

KCMO/DMD—Kansas City Management Office/Debt Management Division, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141-6205.

Ocean freight differential—the amount, as determined by CCC, by which the cost of ocean transportation is higher than would otherwise be the case by reason of the requirement that the commodities be transported on U.S.-flag vessels.

Program Agreement—an agreement entered into between CCC and Cooperating Sponsors.

Program income—interest on sale proceeds and money received by the Cooperating Sponsor, other than sales proceeds, as a result of carrying out approved activities.

Recipient agency—an entity located in the importing country which receives commodities or commodity sale proceeds from a Cooperating Sponsor for the purpose of implementing activities.

Sale proceeds—money received by a Cooperating Sponsor from the sale of commodities.

Section 416(b)—Section 416(b) of the Agricultural Act of 1949.

USDA—the United States Department of Agriculture.

[61 FR 60515, Nov. 29, 1996; 62 FR 2719, Jan. 17, 1997, as amended at 63 FR 59877, Nov. 6, 1998]

§ 1499.2 General purpose and scope.

This part establishes the general terms and conditions governing CCC's donation of commodities to Cooperating Sponsors under the section 416(b) and Food for Progress programs. This does not apply to donations to intergovernmental agencies or organizations (such as the World Food Program) unless CCC and such intergovernmental agency or organization enters into an agreement incorporating this part.

§ 1499.3 Eligibility requirements for Cooperating Sponsor.

A Cooperating Sponsor may be either:

- (a) A foreign government;
- (b) An entity registered with the Agency for International Development (AID) in accordance with AID regulations; or
- (c) An entity that demonstrates to CCC's satisfaction:

(1) Organizational experience and resources available to implement and manage the type of program proposed, *i.e.*, targeted food assistance or sale of commodities for economic development activities;

(2) Experience working in the targeted country; and

(3) Experience and knowledge on the part of personnel who will be responsible for implementing and managing the program. CCC may require that an entity submit a financial statement demonstrating that it has the financial means to implement an effective donation program.

§ 1499.4 Availability of commodities from CCC inventory.

CCC will periodically announce the types and quantities of agricultural commodities available for donation from CCC inventory for the section 416(b) program.

§ 1499.5 Program Agreements and Plans of Operation.

- (a) *Plan of Operation.* (1) Prior to entering into a section 416(b) Program

Agreement, a Cooperating Sponsor shall submit a Plan of Operation to the Director, PDD and to the Agricultural Counselor or Attache, if an Agricultural Counselor or Attache is resident in the country where activities are to be implemented. After approval by CCC, the Plan of Operation will be incorporated into the section 416(b) Program Agreement as "Attachment A."

(2) CCC may require Cooperating Sponsors to submit a Plan of Operation in connection with the Food for Progress program.

(3) A Plan of Operation shall be in the following format and provide the following information:

1. Name and Address of Applicant;
2. Country of Donation;
3. Kind and Quantity of Commodities Requested;
4. Delivery Schedule;
5. Program Description:
Provide the following information:
 - (a) Activity objectives, including a description of any problems anticipated in achieving the activities' objectives;
 - (b) Method for choosing beneficiaries of activities;
 - (c) Program administration including, as appropriate, plans for administering the distribution or sale of commodities and the expenditure of sale proceeds, and identification of the administrative or technical personnel who will implement the activities;
 - (d) Activity budgets, including costs that will be borne by the Cooperating Sponsor, other organizations or local governments;
 - (e) The recipient agency, if any, that will be involved in the program and a description of each recipient agency's capability to perform its responsibilities as stated in the Plan of Operation;
 - (f) Governmental or nongovernmental entities involved in the program and the extent to which the program will strengthen or increase the capabilities of such entities to further economic development in the recipient country;
 - (g) Method of educating consumers as to the source of the provided commodities and, where appropriate, preparation and use of the commodity; and
 - (h) Criteria for measuring progress towards achieving the objectives of activities and evaluating program outcome.
6. Use of Funds or Goods and Services Generated:
When the activity involves the use of sale proceeds, the receipt of goods or services from the barter of commodities, or the use of program income, the following information must be provided:

(a) the quantity and type of commodities to be sold or bartered;

(b) extent to which any sale or barter of the agricultural commodities provided would displace or interfere with any sales that may otherwise be made;

(c) the amount of sale proceeds anticipated to be generated from the sale, the value of the goods or services anticipated to be generated from the barter of the agricultural commodities provided, or the amount of program income expected to be generated;

(d) the steps taken to use, to the extent possible, the private sector in the process of selling commodities;

(e) the specific uses of sale proceeds or program income and a timetable for their expenditure; and

(f) procedures for assuring the receipt and deposit of sale proceeds and program income into a separate special account and procedures for the disbursement of the proceeds and program income from such special account.

7. Distribution Methods:

(a) a description of the transportation and storage system which will be used to move the agricultural commodities from the receiving port to the point at which distribution is made to the recipient;

(b) a description of any reprocessing or repackaging of the commodities that will take place; and

(c) a logistics plan that demonstrates the adequacy of port, transportation, storage, and warehouse facilities to handle the flow of commodities to recipients without undue spoilage or waste.

8. Duty Free Entry:

Documentation indicating that any commodities to be distributed to recipients, rather than sold, will be imported and distributed free from all customs, duties, tolls, and taxes.

9. Economic Impact:

Information indicating that the commodities can be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products within the importing country.

(b) *Agreements.* CCC and the Cooperating Sponsor will enter into a written Program Agreement which will incorporate the terms and conditions set forth in this part. The commodities provided by CCC, and any packaging, will meet the specifications set forth in such Program Agreement. A Program Agreement may contain special terms or conditions, in addition to or in lieu of, the terms and conditions set forth in the regulations in this part when CCC determines that such special

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terms or conditions are necessary to effectively carry out the particular Program Agreement.

§ 1499.6 Usual marketing requirements.

(a) A foreign government Cooperating Sponsor shall provide to the Director, PDD, data showing commercial and non-commercial imports of the types of agricultural commodities requested during the prior five years, by country of origin, and an estimate of imports of such commodities during the current year.

(b) CCC may require that a Program Agreement with a foreign government include a "usual marketing requirement" that establishes a specific level of imports for a specified period. The Program Agreement may also include a prohibition on the export of provided commodities, as well as of other similar commodities specified in the Program Agreement.

§ 1499.7 Apportionment of costs and advances.

(a) CCC will bear the costs of processing, packaging, transportation, handling and other incidental charges incurred in delivering commodities to Cooperating Sponsors. CCC will deliver bulk grain shipments f.o.b. vessel, and shipments of all other commodities f.a.s. vessel or intermodal points. CCC will choose the point of delivery based on lowest cost to CCC.

(b) When the General Sales Manager approves in advance and in writing, CCC may agree to bear all or a portion of reasonable costs associated with:

(1) Transportation from U.S. ports to designated ports or points of entry abroad, maritime survey costs, and in cases of urgent and extraordinary relief requirements, transportation from designated ports or points of entry abroad to designated storage and distribution sites;

(2) In cases of urgent and extraordinary relief requirements, reasonable storage and distribution costs; and

(3) Under the Food for Progress Program, administration or monitoring of food assistance programs, or technical assistance regarding sales of commodities provided by CCC.

(c) CCC will not pay any costs incurred by the Cooperating Sponsor prior to the date of the Program Agreement.

(d) Except as provided in paragraph (b) of this section, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to CCC's delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by CCC to bear the costs identified in paragraphs (b)(2) or (b)(3) of this section shall submit to the Director, PDD, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The non-government Cooperating Sponsor may make adjustments between line items of an approved Program Operations Budget up to 20 percent of the total amount approved or \$5,000, whichever is less without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PDD.

(f) The Cooperating Sponsor may request advance of up to 85 percent of the amount of an approved Program Operating Budget. However, CCC will not approve any request for an advance received earlier than 60 days after the date of a previous advance made in connection with the same Program Agreement.

(g) Funds advanced shall be deposited in an interest bearing account until expended. Interest earned may be used only for the purposes for which the funds were advanced.

(h) The Cooperating Sponsor shall return to CCC any funds not obligated as of the 180th day after being advanced, together with any interest earned on such unexpended funds. Funds and interest shall be returned within 30 days of such date.

(i) The Cooperating Sponsor shall, not later than 10 days after the end of each calendar quarter, submit a financial statement to the Director, PDD, accounting for all funds advanced and all interest earned.

(j) CCC will pay all other costs for which it is obligated under the Program Agreement by reimbursement.